

No. 9(1)-82-6Lab/6670.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad, in respect of the dispute between the workman and the management of M/s Victory Engineering Corporation, Plot No. 257, Sector 24, Faridabad.

BEFORE SHRI M. C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD

Reference No. 353/1981

between

SHRI DAN SINGH, WORKMAN AND MANAGEMENT OF M/S VICTORY ENGINEERING CORPORATION, PLOT NO. 257, SECTOR 24, FARIDABAD

Present :

Shri R. L. Sharma, for the workman.

Shri Ram Saroop Arora, for the management.

AWARD

The State Government of Haryana referred the following dispute between the workman Shri Dan Singh and the management of M/s Victory Engineering Corporation, Plot No. 257, Sector 24, Faridabad, by order No. ID/FD/132/81/53980, dated 3rd November, 1981, to this Tribunal, for adjudication, in exercise of powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of service of Shri Dhan Singh was justified and in order ?
If not, to what relief is he entitled?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the last date of hearing, the representative of the workman made a statement that the workman was not available. Therefore, he was not interested in contesting the case on behalf of the workman.

In this circumstance, I presume that the workman was not interested in pursuing this reference. I pass no dispute award.

✓ Dated the 24th June, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 712, dated 26th June, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh as required under section 15 of I.D. Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)-82-6Lab/6744.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947, (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of The Executive Engineer, Bhiwani Sub-Division No. 3, Hissar.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT, HARYANA,
ROHTAK

Reference No. 30 of 82

between

SHRI MAMAN RAM, WORKMAN AND THE MANAGEMENT OF THE EXECUTIVE ENGINEER,
BHIWANI SUB-DIVISION NO. 3, HISSAR

Present :

Shri Maman Ram, workman in person.
No one for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/HSR/71-81/3488, dated 20th January, 1982 under section 10(i)(c) of the I.D. Act for adjudication of the dispute existing between Shri Maman Ram, workman and the management of the Executive Engineer, Bhiwani Sub-Division No. 3, Hissar. The term of the reference was:—

Whether the termination of services of Shri Maman Ram was justified and in order ? If not, to what relief is he entitled ?

On the receipt of the order of reference notices as usual were sent to the parties. After two dates, the applicant/workman appeared on 15th June, 1982 and made the following statement:—

"I have been re-employed by the management with effect from 1st November, 1981. I have no dispute now left against the management. The award may be passed accordingly."

In view of his statement no further adjudication is required as the workman have been re-employed by the management and there remains no dispute left between the parties. The reference is answered and returned accordingly.

BANWARI LAL DALAL,

Dated the 25th June, 1982.

Presiding Officer,
Labour Court, Haryana, Rohtak.

Endst No. 1490, dated the 28th June, 1982

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,

Presiding Officer,
Labour Court, Haryana, Rohtak

The 25th March, 1982

No. 9(1)-82-8Lab/2191. —In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workman and the management of M/s Managing Committee, C.R. Arya College Sonapat.

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 29 of 1979

between

SHRI BHAGWAN SINGH, WORKMAN AND THE MANAGEMENT OF M/S.
MANAGING COMMITTEE, C.R. ARYA COLLEGE, SONEPAT

Present:

Shri M.S. Rathi, for the workman.

Shri Kanwal Singh, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor,—*vide* his order No. ID/RK/71-78/13504, dated 22nd January, 1979 under section 10(i) (c) of the

I.D. Act for adjudication of the dispute existing between Shri Bhagwan Singh, workman and the management of M/s C.R. Arya College, Sonapat. The term of the reference was:—

“Whether the termination of services of Shri Bhagwan Singh, was justified and in order? If not to what relief is he entitled?”

On the receipt of the order of reference notices as usual were sent to the parties. The parties appeared, filed their respective pleadings on the basis of which the following issues were framed:—

1. Whether Shri Bhagwan Singh was a workman as defined under section 2(s) of the I.D. Act?
2. If yes whether he resigned his post of his own freewill on 10th September, 1976 and the resignation was duly accepted? If not as per reference?

The workman examined Shri Shish Ram, Girdhari Lal, Shri Nulam Singh, Advocate Sonapat, Shri Jug Lal, resident of Bajitpur Delhi and himself as his witnesses and closed his case on 9th December, 1980. The management examined Shri O.M. Rana, Shri Hukam Chand, Accountant and Shri Bhalle Ram Malik, Principal respondent as their witnesses and closed their case on 29th April, 1981. I heard the learned representatives of the parties and decided issue wise as under.

Issue No. 1.—The workman was initially appointed as Accountant and he was subsequently promoted to the post of Office Superintendent,—*vide* resolution No. 1 dated 11th June, 1967. It has been established from the record that the workman was maintaining the record mentioned in para 2 of the statement of claim which has been corroborated by Ex-secretary of the Managing Committee who appeared as WW-3. Ex. W-4 which is the list of files handed over by the workman also establishes the fact that the workman was doing the clerical work and it has not been established that the workman was having sizeable control administrative or supervisory over the staff working with the respondent. I am of the opinion that in view of the evidence on the file the workman is fully covered under the definition of workman as defined in section 2(s) of the I.D. Act. The issue is accordingly decided in favour of the workman.

Issue No. 2.—The workman has pleaded in his demand notice that his resignation was obtained by the management under duress on 10th September, 1976 by threatening him of his arrest under MISA in consequences of his enmity developed with the President of the Managing Committee Shri Dalel Singh for reasons of giving his statement in an enquiry against him in some homo sexual case with a student and also for opposing his candidature during the election for Presidentship of the Committee. The workman produce WW-1, WW-2 and WW-4 in support of his allegation but they have not been also to substantiate the allegations and their testimony cannot be relied upon in the circumstances when there are arrival groups in general in all the privately managed institutions and all the witnesses who appeared before me have stated that they were opposed to Shri Dalel Singh. The documents produced by the management duly admitted by the workman fully established that the workman sought the voluntary retirement,—*vide* Ex. WW-5/7. Though it has also been established that the workman had misappropriated the college funds and deposited the same to the tune of Rs. 1,9600 and the workman was allowed to continue in service till this amount was adjusted on the understanding that the workman shall resign from his service when the accounts are so adjusted. In compliance of that very understanding the workman sought voluntary retirement,—*vide* Ex. MW 3/1 as well as Ex. WW-5/7 and accepted,—*vide* Ex. MW-3/2. The factum seeking voluntary retirement by the workman is also proved by his applications for payment of salary for the notice period and the balance of earned leave wages,—*vide* Ex. MW-3/3 MW 3/4 and Ex. M/-3. It is also proved from the letter Ex. M-1 which is the notice from the advocate Shri R.I. Bhardwaj for payment of

earned leave wages and gratuity in view of the retirement sought by the workman. I am therefore fully convinced that the workman sought voluntary retirement and there was no threat or undue pressure on him for so doing. The workman has not been able to produce any evidence that he made any complaint to any authority for obtaining his resignation under pressure. For a period of about one and a half year from the date of his voluntary retirement to the date of the notice of demand by which it can well be presumed that this is an afterthought and a concocted story and cannot be placed any credence. I am therefore constrained to hold that the workman sought voluntary retirement and it is not a case of termination services of the workman by the management. The workman is therefore, not entitled to any relief. The reference is answered and returned accordingly.
Dated 20th February, 1982.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court Haryana, Rohtak.

Endst. No. 663, dated 24th February, 1982.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I. D. Act.

BANWARI LAL DALAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.

No. 9(1)82-8Lab/2347.— In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workman and the management of M/S Alfamet Pvt. Ltd. Plot No. 148 Sector 24, Faridabad.

**IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT HARYANA, FARIDABAD.**

Reference No. 163 of 1980

Between

**SHRI RADHA KRISHAN, WORKMAN AND THE RESPONDENT MANAGEMENT OF M/S. ALFAMET PRIVATE LTD., PLOT NO. 148, SECTOR 24,
FARIDABAD**

Shri Darshan Singh, for the workman.

Shri R.N. Rai, for the respondent management.

AWARD

This reference No. 163 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/FD/ 32/80/12377, dated 7th March, 1980, under

section 10(i) (c) of the Industrial Disputes Act, 1947, existing between Shri Radha Krishan workman and the management of M/S. Alfamst Private Ltd., Plot No. 148, Sector 24, Faridabad. The terms of the reference was :—

Whether the termination of services of Shri Radha Krishan was justified and in order? If not to what relief is he entitled?

On receiving the order of reference, the notices were issued to the parties. The parties appeared and filed their pleadings. The workman's representative did not file the claim statement and stated that the demand notice be treated as claim statement. The case of the workman according to the demand notice and rejoinder is that he was illegally terminated from service from 31st July, 1979 and he was appointed on 17th July, 1978 at Rs. 275. After giving the written statement the workman filed the rejoinder in which he has stated that no notice enquiry was received by him from the respondent and the written statement is quite wrong. The case of the respondent according to the written statement is that the workman was dismissed from service in the acts of gross mis-conduct and after complying the principles of natural justice. The respondent issued the chargesheet dated 31st July, 1979 for act of mis-conduct involving instigation of the workmen to report illegal tool down strike and also intimidation of others workers for illegal tools down strike. The tools down strike was resorted during the operation of Conciliation Settlement dated 15th February, 1978 and during the conciliation proceedings held by the Labour cum Conciliation Officer in respect of the demand notice dated 15th July, 1979. The said strike was illegal in accordance with section 23 read with section 24 of the Industrial Disputes Act, 1947. The workman did not submit any explanation to the charge-sheet and after waiting the domestic enquiry was constituted by appointing an enquiry officer,—vide their letter dated 22nd August, 1979. The enquiry officer gave every opportunity to the workman to participate in the enquiry and defend himself. He sent registered notice which were returned back with the remarks not known. The said copies, were also displayed on the notice board but the workman was avoiding the service of the notice issued by the enquiry officer. The Enquiry Officer at last got published this notice in the local Hindi news paper in 'Bharat Darshan' twice on 7th September, 1979 and again on 19th September, 1979. After all this procedure the enquiry officer proceed with the exparte proceedings and submitted the exparte enquiry report holding the workman guilty of the charges. The respondent management after going through the whole record of the workman with the enquiry report decided to dismissed the services of the workman,—vide letter dated 17th December, 1979. The dismissal was made after a fair and proper enquiry, so the workman is not entitled for any relief.

On the pleadings of the parties, the following issues were framed :—

1. Whether the domestic enquiry held by the management is proper justified and in order? If so to what effect?
2. Whether the termination of service of the workman is proper, justified and in order? If not, to what relief is he entitled?

As ordered by my predecessor Issue No. 1 be treated as preliminary issue and decided first. So my findings of this issue is as under :—

Issue No. 1.—

The representative of the respondent argued on this issue and cited the judgement from the Hon'ble Supreme Court in the case of Central Bank of India Ltd., Vs. Karunamoy Banerjee 2 SCLJ page 1430, in which is held that :—

“The Rules of natural justice require that the workman proceeded against, should be informed clearly of the charge levelled against him; witnesses

should be normally examined in the presence of the employee in respect of the charges; if statements, taken previously and given by witnesses, are relied on, they should be made available to the workman concerned; the workman should be given a fair opportunity to cross examine witnesses; he should be given a fair opportunity to examine witnesses, including himself, in support of his defence; and the enquiry officer should record his findings, based upon the evidence so adduced”.

He further argued that there was a tool down strike in the factory from 25th July, 1979 by the workman on which the respondent issued notices which were displayed on the notice board and also sent to the Labour authorities and district authorities for information. As stated by MW-1—Shri S.D. Sharma that he was appointed as enquiry officer,—vide letter Ex.M-1 and Ex. M-2, the chargesheet of the workman was also received by him. He issued letter Ex. M-3 to the workman which was returned by the postal authorities with the remarks not known. He further stated in his statement that the copy of Ex. M-3 was also displayed on the notice board and he also sent another letter Ex. M-4 to the workman for participating in the enquiry, which was also received back. Finally he got published enquiry notice in the local hindi news paper ‘BHARAT DARSHAN’ which is Ex. M-5. The witness has further stated that Ex. M-6 was also sent by him. The postal receipt Ex. M.6/1 which came back and envelope is Ex. M-6/2 and M-6/3. He again got published this notice of enquiry proceedings in the news paper ‘Bharat Darshan’ which is Ex. M-7. The copy of same is Ex. M-7 which was also displayed on the notice board. He further stated that after so many efforts the workman did not come to participate in the enquiry proceedings so he proceeded *ex parte* against the workman on 23rd September, 1979 and closed the proceedings on 27th September, 1979. The enquiry proceedings is Ex. M-8 contained with documents Ex. M-9 to M-22. These documents are included the notice to the workman and other documents regarding the workman. The enquiry officer submitted his enquiry report,—vide Ex. M-23, in which the workman was found guilty of the charges of misconduct alleged against him. In the cross examination the respondent witness MW-1 has stated that he had acted according to the Model Standing order. He has further stated in his cross examination that address of the workman was taken from the file of the workman concerned. The respondent’s representative further argued that the notice were sent to the workman on his proper address which the workman has admitted in his cross examination as correct. which shows that the workman did not receive these notices knowingly. The representative of the respondent cited CROMPTON GREAVES LIMITED BOMBAY vs. SH S.W. SHINDE [1974 (28) FLR page 80], in which is held that:—

“Where the workman knew that he was chargesheeted and the enquiry was to be held on a certain dated at a particular time and he intentionally remained absent the charge-sheet would be deemed as legally served”.

and argued that according to this citation, the chargesheet would be deemed to be as legally served. He further argued that the workman as WW-1 has stated that he neither got any charge-sheet nor any letter regarding the enquiry. He further stated that he also did not read any notice on the notice board, but in the cross examination he has admitted that he had received the enquiry notice, but the union leader told him he need not to attend the enquiry as he has not received any chargesheet this shows that the workman had the knowledge of the enquiry and he should come in the enquiry for participating in the enquiry proceedings and there he could objected the enquiry proceedings about the non supply of the chargesheet to the workman. But the workman choose not to participate in the enquiry proceedings and not to raise any objection in the enquiry proceeding which was in the knowledge of the workman shows the fault of the workman and not of the respondent management. The respondent issued chargesheet Ex. M-2 and which was sent to the workman under registered post. The enquiry officer was appointed and he issued so any notice to the workman without proceedings enquiry *ex parte* at the first instance. He also

got published the enquiry notice in the local hindi paper 'BHARAT DARSHAN' which is proved by the enquiry officer as witness of the respondent before this Court. The respondent has proved the first requirements of principles of the natural justice in the enquiry proceedings by showing all these notices and facts before the Court and it is established that the workman knew the fact about the chargesheet and the enquiry and knowingly avoid his presence in the enquiry proceedings, and the enquiry officer had adopted a proper Course of enquiry. No fault can be found with this procedure, which procedure has been upheld by their Lordships of Supreme Court in the above case. He further argued that there are contradiction in the examination in chief. He has stated that he had not get any intimation about enquiry but in his cross examination he has admitted that he had received information about the enquiry. From this statement it is established that the workman has due notice of the enquiry and there is a citation of 'LAKSHMI DEVI SUGAR MILLS LIMITED vs. PT. RAM SARUP (1956 SCR Page 916), in which it is held that:—

“Due notice of the enquiry was given to the respondent by the letter of the management addressed to them on June 3, 1952, and if the respondents did not avail themselves of the opportunity of presenting themselves and defending their action at the enquiry they had only themselves to blame for it. It was within the province of the management to hold such an enquiry after giving due notice thereof to the respondents and to come to its own conclusion as a result of such enquiry whether the respondents were guilty of the charges which had been levelled against them. If full and free opportunity was given to the respondents to present themselves at the enquiry and defend themselves it could not be said that the enquiry was anything but fair. No principles of natural justice were violated and the management was at liberty to come to its own conclusion in regard to the culpability of the respondents and also to determine what punishment should be meted out to the respondents for the misconduct and insubordination proved against them.”

He further argued that there was a tool down strike in the factory from 25th July, 1979 to 29th July, 1979. The workman admitted the fact of displaying the notice on the notice board from 25th July, 1979 to 29th July, 1979 but he states that there was no tool down strike in the factory, how it can be believed. There was no reason to believe the workman's statement because what was the necessity to display the notice on the notice board from 25th July, 1979 to 29th July, 1979 for the tool down strike and the copies of the same were sent to the labour authorities and the district authorities. It shows that there was tools down strike in the factory and the workman was involved in instigating other workers for this tool down strike and other misconduct as alleged in the charge-sheet. It is proved even by the statement of the workman. The notice displayed on the notice board were Ex. M-12 from 25th July, 1979, Ex. M-13 for 26th July, 1979, Ex. M-14 for 27th July, 1979, and Ex. M-15 for 29th July, 1979. The tools down strike was illegal because it has been resorted during the operation of settlement dated 15th February, 1978 which is admitted fact by the workman and during the conciliation proceedings held by the Labour cum-Conciliation Officer in respect of the demand notice, dated 5th July, 1979, for which the date was fixed 16th July, 1979 and further adjourned to 26th July, 1979. The letter from the conciliation officer for fixing the date is 16th July, 1979 on a demand notice dated 5th July, 1979 is Ex. M-11. The demand notice of the workman dated 5th July, 1979 is Ex. M-10. The settlement dated 15th February, 1978 is Ex. M-9 which was operative up to April, 1980. He further argued that this document shows that it was the illegal tools down strike and it was due to the workman as alleged in the charge-sheet. He further argued that before this Court there are two oral statement one of the Enquiry Officer as MW-1 and other is workman's statement as WW-1. The enquiry officer has proved all his documents in the enquiry and other documents which were concerning to the enquiry against these workmen and the workman has contradicted in his statement, supporting the case of the respondent. So in view of the document filed by the respondent and the oral

evidence of the respondent it is well proved that the respondent held a fair and proper domestic enquiry against the workman. If it was not fair and proper the workman when he came to know about the ex-parte enquiry against him in this Court. he can also request the Court to hold enquiry against him in the Court because it was a ex-parte enquiry without notice to the workman. The learned Court can very well order to produce the witness produced before the enquiry officer and the enquiry can be held even at the stage, but the workman with his representative has cared nothing about the same because they knew this fact that there are true charges against the workman which are also be proved before this Court. So they neglect this fact and could not apply for this proper enquiry in this Court so the enquiry is fair and proper.

The representative of the workman argued on this issue that the workman was a permanent and old employee of the respondent and he was an active member of the union in the factory. The respondent wanted to get rid off old employees of the factory for their own interest so they stopped the gate on 31st July, 1979 and displayed a letter, Ex. W-1 on the notice board with an instruction that whosoever want to come in the factory, should sign this assurance letter. The letter, Ex. W-1 was not in good spirit and was humiliating so the workman refused to signed this letter and so the service were terminated by the respondent on that date. He further argued that no notice or charge-sheet was sent to the workman as he has stated in his statement as WW-1 that he received no charge-sheet or the intimation about the enquiry. The ex-parte enquiry was a formal and simply a Drama to get rid off this workman. He further argued that the workman was an old employee. He should not have dismissed in this way. He should be paid the compensation for termination of service and other legal dues of the workman at the time of termination which were not offered or given at the time of termination. So the termination was illegal without any justification so the workman is entitled for his reinstatement with full back wages and continuity of service. The domestic enquiry cannot be said as proper and fair when no chance was given to the workman for the participation. No opportunity was given for his hearing. It was all a Drama and cannot be believed as fair and proper.

After hearing the arguments of both the sides and carefully going through the file, I am of the view that the workman has taken his acts very lightly. If there was an ex-parte enquiry against the workman he should have request the Court to make a fair and proper enquiry in the Court by producing the witness of the respondent and documents relied upon which can be held very easily and the Court can come into conclusion very fairly in the presence of documents before me and the evidence produced by the parties it is clear that the workman avoided the notice for the enquiry and after knowing the enquiry proceedings which he has stated in his cross examination that his union Labour Leader Stopped him to participate in the enquiry proceedings as he has not received the charge-sheet. It was not the proper way for the workman to avoid the enquiry proceedings. He should have come to participate in the enquiry proceedings and have objected the proceedings as illegal without giving the charge-sheet to the workman, but avoiding the enquiry proceedings knowingly goes against the workman. The respondent gave the full opportunity to participate in the enquiry proceedings to the workman by issuing registered notice at his address which is admitted as correct by the workman in his statement and also by publishing the notice on two dates in Hindi local paper. After giving so many opportunities, the enquiry officer has rightly proceeded ex-parte and the findings of the enquiry officer are correct in above circumstances as stated by the enquiry officer as MW-1 and the documents before him. I hold that the enquiry was fair and proper. So this issue is decided in favour of the respondent and against the workman.

Issue No. 2.—After deciding issue No. 1 in favour of the respondent holding the enquiry fair and proper, there is no need to give any chance to the parties to lead evidence

on issue No. 2 as the dismissal of the workman was proper and justified and in these circumstances, the workman is not entitled for any relief.

This be read in answer to this reference.

Dated 26th February, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 557, dated 2nd March, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government, Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9(1)82-8Lab/2345. —In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Vishal Private Limited, 49-DLF, Mathura Road, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK, PRESIDING OFFICER,
LABOUR COURT, HARYANA, FARIDABAD

Reference No. 320 of 1980

between

SHRI SURESH KUMAR, WORKMAN AND THE RESPONDENT MANAGEMENT
OF M/S VISHAL PRIVATE LTD., 49, D.L.F., MATHURA ROAD,
FARIDABAD

Present,—

Shri Darshan Singh, for the workman.

Shri K. P. Aggarwal, for the respondent management.

AWARD

This reference No. 320 of 1980 has been referred to this Court by the Hon'ble Governor of Haryana, —*vide* his order No. ID/FD/106-80/39590, dated 31st July, 1980, under section 10(i)(c) of the Industrial Disputes Act, 1947, existing between the workman Shri Suresh Kumar and the respondent management of M/s Vishal Private Ltd., 49, D.L.F., Mathura Road, Faridabad. The terms of the reference was :—

“Whether the termination of service of Shri Suresh Kumar was justified and in order ? If not, to what relief is he entitled ?

On receiving this reference, the notices were issued to the parties and the parties came present in the Court and filed their pleadings. According to the demand notice and claim statement the case of the workman is that he was illegally terminated on 11th April, 1980 without any notice and charge-sheet. The work and conduct of the workman was quite satisfactory and they have not complained against the workman. The termination is illegal un-justified and the workman be re-instated with full back wages and continuity of service.

The case of the respondent according to written statement is that the claimant does not come under section 2(s) of the Industrial Disputes Act, 1947 and not a workman so the reference is bad in law. The claimant was employed as Jobber in a supervisory capacity and was getting more than Rs 500 per month. The claimant being a senior member of the staff provided shelter to the strikers and other notorious persons during the strike which was resorted by the workman on 20th March, 1980. The claimant was all along conniving with the workman and passing all secrets to them. In these circumstances, the management lost its complete confidence, so he was discharged from the services on 24th April, 1980 as discharge simplicitor. The charge was fully legal and justified, so the reference may be rejected.

On the pleadings of the parties, only one issue as per reference was framed :—

Whether the termination of services of the workman was proper, justified and in order ? If not, to what relief is he entitled ?

But on the application of the respondent the additional issue was framed on 6th January, 1981 as under :—

Whether the applicant does not come under the definition of the workman of the Industrial Disputes Act, 1947 ?

According to the order of my predecessor this issue was treated as preliminary issue and decided first. After leading the evidence by both the parties, on this issue, I decided this issue on 5th October, 1981 in favour of the workman which is as under and after that the parties were given the opportunity to lead evidence on the issue as per reference. My findings on both the issues are as under :—

Issue No. 1—

Issue No. 1 is whether the claimant comes under the definition of workman. On this issue the representative of the respondent argued that the claimant was employed on the job of a jobber and it was a supervisory category in the factory and he was giving more than Rs. 500 as a salary. The claimant also gets the other amount which are known as out-put payments which are shown in Exhibit M-1 to M-6. These vouchers are signed by the claimant and the claimant has admitted his signature in his statement saying that the payment are of the over-time and not otherwise. He further argued that the respondent witness MW-1 Shri P. V. Goela has further stated in his statement that he used to sign the requisite slips which are Exhibit M-7 to M-17 which bears the signature of the claimant and the claimant had admitted the signature on these slips. The witness has also stated in his statement that he used to recommend leave applications which are Exhibit M-18 to M-22 and he used to issue gate passes to the workman which are Exhibit M-23 to M-44. All these documents bears the signature of the claimant. He further stated that the claimant allot the work as shown in the register Exhibit M-46. The entries in the register in the hand of the workman and register was solely under his custody. There were 20 to 25 workmen used to work under the claimant. He further argued that the respondent witness has further stated in his cross-examination that Exhibit M-47 to M-52 are also the

payment made to the claimant when there was some progress in the efficiency and production of the factory. He argued that the workman was in the category of a staff and not in the workman having supervisory and managerial duty does not come within the definition of a workman.

The representative of the workman argued on this issue that the claimant was a workman under the act as he is a skilled workman and under the Haryana Minimum Wages Act skilled and highly skilled persons are workman. The respondent has issued the attendance card. The attendance card is Exhibit W-1. The E.S.I. Card is Exhibit W-2 and the Provident Slip is W-3 as issued to the other workmen of the factory which shows that the claimant was a workman and not comes under the category of supervisor and managerial staff. He further argued that the workman has admitted the signature on Exhibit M-1 to M-6 as they were payment of the overtime which is given only to the workman and not to the higher staff and the progress and production payment are not included in the salary. The regular salary what the workman used to receive was Rs. 500 which is a workman's salary. The claimant had admitted the signature on Exhibit M-7 to M-17 on the requisite slips and he has stated in his statement as WW-1 that he used to bring the articles from the store by signing the same. The store issue the goods only after signing the requisite slips and he used to bring this for his own use. He further argued that the claimant has further stated in his statement that he used to get the pay on register whereas the other used to get their salaries through checks so he was not come under the supervisory category. He further argued that in his cross-examination the workman has stated that he is under Matriculation and knows little english and Hindi. The claimant has admitted the signature on Exhibit M-30 to M-40 for the recommendation of leave because the workman has stated in his cross-examination that he used to recommend leave because he has to work in the place of the workmen whom he recommend the leave. He argued that the nature of the duty of this claimant was of the workman and not of supervisor. He used to work of his own hands and he was very junior workman. He further argued that the E.S.I. and P.F. is deducted of the workman and not of the supervisor and managerial staff. It is very clear from the document that the claimant was the workman. The main function of the claimant was to do the job with his own hands and incidently he used to recommend the application and other thing being a senior man among the workman.

After hearing the arguments of both the sides and carefully going through the file, I am of the view that the arguments put forward by the representative of the workman has force, because the attendance card, E.S.I. and P.F. Documents shows that the claimant was the workman and not comes under the supervisory staff. The jobber is such a category in the factory who has to work with his own hands. So deciding the issue of the workman I have to see the work what the claimant is doing and not the salary. The workman has stated in his statement that he used to work with his own hand and incidently supervisory work of other workman. The claimant is come under the highly skilled workman and comes under section 2(s) of the Industrial Disputes Act, and this issue is decided against the respondent and in favour of the workman.

Issue No. 2—

Issue No. 2 is as per reference ? After deciding the preliminary issue, the respondent produced three witness as MW-2 Shri Pardeep Kumar Tiyaagi, Purchase Officer, Shri Mahi Pal, MW-3, a jobber in the factory and Shri P. V. Goela MW-4. According to Exhibit M-54 and W-1 the representative of the respondent argued that the workman was discharged on account of loss of confidence in Exhibit M-54 in which it is written that since you belong to the management side and have been regularly coming for work, the management could not imagine that you were providing shelter to the above mentioned persons, who acted notoriously against the interest of the management and the willing and loyal employees and thus betrayed its confidence. In Exhibit W-1 it also mentioned that you are hereby discharge from service for loss of confidence on payment of one months salary

in lieu of notice. It is true that the workman was discharged on the basis of loss of confidence. There was a strike in the factory on 20th March, 1980 in which very few workmen remained inside the factory, in which the claimant Shri Suresh Kumar was one of them. The respondent constituted an action committee in respect of the strike and included the claimant as one of the representative of the jobber in that Committee and they used to discuss as stated by MW-2 Shri Pardeep Kumar Tiwagi in his statement that they used to discuss about the action of the strike in that committee and when we go after the action, we found that it is already leaked out to the strikers and they alerted themselves for this action. The witness stated that they were very perturbed and was in the search of the persons who leaked this confidential thing to the workers. One day he was going to the house when he saw the strikers sitting at the house of the claimant. The persons were Shri Sahdat Khan, Sanchan Singh, Ram Bilas, Avtar Singh who were very active members in the strike. These strikers made a plan to harm the factory which the claimant came to know and inform the police station accordingly. The letter, Exhibit M-53 was issued by the respondent in the name of the S.H.O. Faridabad for this purpose in which the name of Sahdat Khan, Surinder Kumar and Ram Bilas were given, to harass the loyal employees of the respondent to the greater extent. The police raided the claimant house on 9th April, 1980 along with the witness MW-2 who has stated in his statement that he accompanied the police as the police does not know the location of the claimant house. At about 11.00 P.M. the police arrested Shri Ram Bilas, Surinder Kumar and others at the residence of the claimant who were holding the meeting in house. After this arrest the management confirmed the fact that the claimant was the person who used to leak out the whole confidential talks of the management to the strikers. He further argued that MW-3 Shri Mahi Pal working as jobber in the respondent has come in the witness box and he has corroborated the statement of MW-2. He has stated in his statement that only 15 or 20 workmen were inside and Shri Suresh Kumar claimant was also included and he used to leak out the confidential talk decided in the action committee of the respondent and failed the action of the respondent to finish the strike. The claimant used to support the strikers. He further argued that MW-4 Shri P.V. Goela manager of the respondent factory has also supported the same and corroborated the fact of leaking the confidential things of the respondent to the strikers. He has stated in his statement that whatsoever line of action was decided that reached to the strikers within no time and the respondent management always failed and the respondent was very worried and does not know who leaked the whole talk of the respondent. The respondent witness Shri Pardeep Kumar searched out the whole mistry by moving among the workers and he came to know that all action of the strikers is decided at the residence of the claimant at night so the matters was reported to the police and the police arrested the strikers at the residence of the claimant. The witness has further stated in his statement that Shri Ram Bilas one of the hardant strikers, who was the brother-in-law of the claimant and which is admitted in the statement of WW-1 Shri Ram Bilas. That is why the claimant used to help the strikers and leak out all the things which was decided by the action committee of the respondent in which the claimant was also a member. He further argued that from the very beginning the case of the respondent is that the workman was discharged due to loss of confidence, which is also corroborated by the letter, dated 24th April, 1980 which is Exhibit W-1 and the letter dated 11th April, 1980 Exhibit M-54. The respondent has not made their case after thought and they removed the service of the workman after giving the letter dated 11th April, 1980 Exhibit M-54 which was received by the workman and signed the same at mark 'A'. In this letter it is written that "when during a raid by the police on 9th April, 1980 at 11-00 P.M. at your residence, Mr Ram Bilas was found in your residence from where he was arrested besides Shri Bachan Singh, Bal Mukand, Sahab Singh, Mool Chand, Surinder Pal, Ram Kumar who also have been acting violently during all this time. Shri P.K. Tyagi had also accompanied the police at the time of the raid. You betrayed the confidence reposed in you by the management as a responsible employee of the company. You are hereby called upon to submit your explanation." He further argued that the claimant has produced only Ram Bilas to corroborate his statement because he was his near relative. The witness has admitted in his cross-examination that he is gainer brother-in-law.

of the claimant. He has further admitted that he was living in Bengal National Textile Colony and the workman is living in Shashtri Colony with a distance of six k.m. The witness MW-1 also admitted in his cross-examination that he was arrested on 9th April, 1980 at 11.00 P.M. at the residence of the workman and at the time of arrest Shri Ram Avtar and Ram Kumar were also arrested there. He further argued that witness WW-1 has stated that he was the president of the factory union, but he has not produced any record to show of his election. The claimant has not shown any reason in claim statement or demand notice why he was removed from service. He has not taken the pleas for the victimisation or any other allegation on the respondent. Then why he was removed. It was the only reason that the workman was joining hands with the strikers and lost the confidence of the respondent management. So the management discharged the workman from service as simplicitor.

The workman's representative argued that the arguments put forwarded by the respondent is false and the statement made by the respondent witness are also false because they have not produced any thing in the statement. The story of action Committee in the factory is not proved in the Court. There was no writing of any proceedings of this action Committee. The action Committee was organised by the respondent only to remove the workman and the workman was so small employee who cannot be taken as man of confidence of such a high level Committee. The respondent has failed to prove the action of the Committee and they have not properly told the member of the action committee. He further argued that the respondent has stated in his written statement that the claimant used to provide shelter to the notorious persons and strikers, but they have not produced in the Court, who were those notorious persons. There was no evidence on the record that Shri Ram Bilas who was a relative of the workman was notorious person as shown by the respondent and these workmen were arrested under section 107, 151 Cr.P.C. who were released on bail on next day on which they were arrested. The Model Standing orders are applicable in the factory in which discharge simplicitor and loss of confidence has no place. The charge-sheet was given to the workman and the workman replied but no enquiry was held against the workman and without the enquiry the respondent has acted illegally by terminating the services of the workman. He further argued that the respondent has produced one Jobber Shri Mahi Pal, who has stated nothing in his statement. He has stated that he did not hear the meeting proceedings and he was no the member of that action committee. The witness has further stated that the claimant go out-side to tell the secrets of the respondent. He further argued that the workman was not the confidential person of the respondent. He was turned out because the management asked the workman to bring Shri Ram Bilas in the side of the respondent management which the workman tried his best but could not succeed, on which the management annoyed with the workman and tried to remove him by one reason or the other. He further argued that the workman was given the increment of Rs 75 in the year and in the same year he lost the confidence of the respondent, which clearly shows that there was no complaint against the workman and the workman is only removed due to the fact that he failed to bring round Shri Ram Bilas his near relative according to the requirement of the respondent management.

After hearing the arguments of both the sides and carefully going through the file, I am of the view that the arguments put forward by the respondent has weight and the respondent has proved the case of loss of confidence in the workman. It is admitted fact that the workman was inside at the time of strike. It is also admitted fact that Shri Ram Bilas, who was the main person of the strike was the brother-in-law of the workman and was also arrested at the residence of the workman in the night at about 11.00 P.M. with other strikers shows that all these strikers made the workman's house at meeting place. They meet at the night and make a plan for next day function in the strike which connect the whole story of confidence and leaking of the management planning because he was inside the factory and used to hear the schemes of the respondent management for ending the strike. The respondent witness connected the whole story in his statement by got arresting these strikers at the house of the respondent, at the late night. There is no reason given by the workman nor his witness Shri Ram Bilas why the other persons were there at the late night, clears the whole

position that the workman was connected with the strikes and the respondent has rightly lost their confidence in such a workman. So, in these circumstances, the workman is not entitled for any relief and the issue is decided in favour of the respondent and against the workman.

This be read in answer to this reference.

Dated the 26th February, 1982

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 555, dated 2nd March, 1982

Forwarded (four copies) to the Commissioner and Secretary to Govt. Haryana, Labour Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

No. 9 (1) 82-8Lab/2348—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s Alfamet Pvt. Ltd. Sector 24, Faridabad.

IN THE COURT OF SHRI HARI SINGH KAUSHIK PRESIDING OFFICER
LABOUR COURT HARYANA, FARIDABAD.

Reference No. 243, 247, 254, 250, 252, & 248 of 1980

Between

S/SHRI DEEP CHAND, RAMA KANT, DEV MUNNI, SHIV SHANKAR, BABU LAL AND SITA RAM, WORKMEN AND THE RESPONDENT MANAGEMENT OF M/S ALFAMET PRIVATE LIMITED, SECTOR 24, FARIDABAD.

Present.—

Shri Darshan Singh, for the workman.

Shri R.N. Rai, for the respondent-management

AWARD

These reference No. 243, 247, 254, 250, 252 and 248 of 1980 have been referred to this Court by the Hon'ble Governor of Haryana, —vide his order No. ID/FD/26-80/22998, dated 5th May, 1980, ID/FD/26-80/23231, dated 6th May, 1980, ID/FD/26-80/23273, dated 6th May, 1980, ID/FD/26-80/23249, dated 6th May, 1980, ID/FD/26-80/23261, dated 6th May, 1980, ID/FD/26-80/23237, dated 6th May, 1980, under section 10 (i) (c) of the Industrial Disputes Act, 1947, existing between Shri Deep Chand, Rama Kant, Dev Munni, Shiv Shankar, Babu Lal and Sita Ram and the respondent management of M/S. Alfamet Private Limited, Sector 24, Faridabad. The terms of the reference was :—

Whether the termination of services of Sarv Shri Deep Chand, Rama Kant, Dev Munni, Shiv Shankar, Babu Lal and Sita Ram were justified and in order ? If not, to what relief are they entitled ?

After receiving these references notices were issued to the parties. The respondent appeared in the Court and filed their pleadings in all the cases. The case of the workman according to their demand notice and claim statement is that they were illegally terminated by not allowing on duty 31st July, 1979. On 31st July, 1979 the management illegally lock out the factory and did not allow the workmen to go in the factory. They were asked to sign on a written assurance letter which were refused and not allowed in side the factory so they are entitled for the reinstatement with full back wages and continuity of service.

The case of the respondent according to the written statement is that the workmen had resorted to illegal tool down strike w.e.f. 25th July, 1979 which continued till 29th July, 1979. 30th was the weekly off of the factory. The said tool down was illegal because it was resorted during the pendency of the Conciliation proceedings before the Conciliation Officer and during the operation of the Conciliation Settlement dated 15th February, 1978 which was operative upto 30th April, 1980. Such strike was in contravention of section 23 read with section 24 of the Industrial Disputes Act. The tool down strike was continued by acts subversive of discipline. The management was left with no alternative except to ask for a written assurance. After 15th August, 1979 most of the workmen signed the undertaking. Shri Sita Ram signed the undertaking on 17th August, 1979 and worked till 28th August, 1979 and after that started remaining absent. Shri Babu Lal also signed the undertaking and worked till 21st August, 1979 and thereafter starting remaining absent. The management sent the letter dated 21st August, 1979 to Shri Deep Chand under registered cover and letter dated 26th August, 1979 to Shri Babu Lal, Sita Ram by registered cover. Since the workmen started remaining absent without any intimation and failed to report for duty notices were issued in the Bharat Darshan newspaper asking them to report for duty till 23rd September, 1979. If they failed to report for duty they lost their lien according to their appointment letter as per terms of appointment as well as clause 16(4) of Model Standing Order. On the pleadings of the parties, the following issues were framed :—

- (1) Whether the references are bad in law and incompetent and the workmen lost their lien of their appointment and there is no termination within the meaning of section 2(a) of the Industrial Disputes Act, 1947.
- (2) Whether the termination of services of the workmen are proper, justified and in order? If not to what relief are they entitled?

These cases were consolidated by my predecessor on the request of both the parties on 9th September, 1980 and 17th October, 1980. So the decision of all these references will be under one award. My findings on issue is as under :—

Issue No. 1

The representative of the respondent argued on this issue that there was a tool down strike in the factory from 25th July, 1979 and the workmen remained out side. The respondent issued so many notices from 25th July, 1979 to 31st July, 1979 and the copies of the same were displayed on the notice board and sent to the Aabour authorities and district authorities. Most of the workmen joined the duty upto 15th August, 1979 and the remaining workmen sent their demand notices out of which 17 references were sent to the Court and other were rejected by the Government and out of these 17 reference, 14 workmen settled their dispute in which Shri Shiv Shankar, Ref. No. 250/80, Dev Muni Ref. No. 254/80 and Rama Kant Ref. No. 247 of 1980 have also settled their disputes. In these consolidated cases only three workmen came in the evidence, they are S/Shri Deep Chand, Sita Ram and Babu Lal. Other did not come because they have settled their dispute with the respondent management. The copies of the settlement are Exhibit M-A of Shri Shiv Shankar, Exhibit

M-66 of Shri Dev Munni Exhibit M-B of Shri Rama Kant. The representative of the workmen has stated at the time of recording of evidence of the workmen that Shri Rama Kant has not come to him since long. He does not know about the workmen. He will try to produce him in the Court at the stage of arguments and if he failed to produce the workman then he will withdraw him to pursue the case of Shri Rama Kant. In the case of Muni Dev, the workman's representative has withdrawn as settled. It shows that all these references have been settled with the respondent and required no arguments on these references. Out of these settled cases the case of Shri Deep Chand, Sita Ram and Babu Lal remained and they lost their lien according to Model Standing order clause 16(4) and the terms and condition of service which is according to their appointment letter, Exhibit M-1/1, M-3 and M-5 at para 11. He further argued that the respondent has produced Shri R. Sibbal as witness M-W-1 who is an Administrative Officer of the respondent and he has proved all the documents filed by the respondent. He has stated on oath that Exhibit M-1/1 and Exhibit M-3 and M-5 were issued by him which are signed by the workmen at the time of their appointment. The signature are admitted by the workmen and it is also admitted by the workman that they received the appointment letter in their statement as WW-1. The respondent company is governed by the Model Standing Order. The respondent received one demand notice dated 9th January, 1980 during the pendency of settlement dated 15th February, 1978 Exhibit M-10. The Conciliation Officer had fixed the date as 16th July, 1979 for the conciliation proceedings, —vide notice Exhibit M-12 which was further postponed for 26th July, 1979, but the workmen made tool down strike on 25th July, 1979 which continued upto 31st July, 1979. The management displayed notice Exhibit M-13 to M-17 between 25th to 29th July, 1979. 30th July was the weekly off of the company. On 31st July, 1979 the management displayed Exhibit M-18 and M-19 on the notice board. The management also displayed the notice Exhibit M-20 to M-22 during this period and the copies were also sent to the Labour authorities and district authorities. The witness further stated that many of the workmen joined their duties after signing the undertaking between 3rd August, to 13th August, 1979. Shri Sita Ram, Babu Lal joined their duties by signing M-9 and M-60 which is admitted by the workmen in their statement. Shri Deep Chand did not give any undertaking and he remained absent from 31st July, 1979 and 26th July, 1979 as shown in his attendance record Exhibit M-83. The workman Shri Sita Ram joined his duty on 17th August, 1979 but he absented himself from 28th August, 1979. The attendance record is Exhibit M-86. Shri Babu Lal joined his duty and worked upto 20th August, 1979. His attendance record is Exhibit M-87. The witness further stated that Exhibit M-94 and 95 were sent to Shri Babu Lal and Deep Chand on 21st August, 1979 through registered post. The receipt are Exhibit M-90 and M-107. Even after this letter the workman did not report for duty and remained absent. The letter sent to Shri Babu Lal received un-delivered from the postal authority which is Exhibit M-114. The workman did not report for duty even after this letter the management publish notice in the local News Paper 'Bharat Darshan' on 19th September, 1979 and copy of which is Exhibit M-115. The management waited upto 26th September, 1979 and when the workman did not report for duty they were shown as to lost of lien on the job. The management has not removed them on any misconduct. The notice Exhibit M-13 to M-17 were also sent to the authorities, through Exhibit M-116 to 119. The Government received the demand notice of many workers who participated in the tools down strike which is Exhibit M-11 and received the letter from the Government as Exhibit M-120. He further argued that in the cross examination of the respondent witness he has further clarified the case of the respondent as he has stated that settlement Exhibit M-10 was arrived at between the management and the workers union of the factory. The witness further stated that the record of production was maintained in the factory during the tools down strike by the management, and the production was nil. The witness has denied that more than half did not give the required undertaking. He further argued that the notices were sent to the workmen by registered post which were received back un-delivered. Though the workmen have admitted correct their addresses on the envelope. It shows that the workmen did not received the registered letters knowingly. He further argued that after publication of the notice

in the news paper in the "Bharat Darshan" which Exhibit M-115 which includes the names of these workmen, the management did not feel any necessity of sending another notice. He further argued that the workman in his cross examination has admitted that he did not sign Exhibit W-1 and did not join the duty and he again admitted that he did not report to the labour authority about the Exhibit M-1. He further stated that he only orally stated to the Labour Officer, Faridabad about this document. He further admitted in the cross examination that many workmen join the duty after reaching and sending the Exhibit M-1. He denied the acknowledgement of publication in news paper in the 'Bharat Darshan'. He further argued that according to this demand notice and claim statement of these three workmen, they have stated that the factory had declared a lock out on 31st July, 1979 and they illegally not allowed to go inside the factory. All these three workmen admitted that the workman had asked for an undertaking. While in support of their contention about the lock out they have not filed any documentary evidence nor they have produced any testimony. Even Shri Deep Chand has not stated in his statement that the management had declared any lock out. When their contention is un-supported by any oral evidence the same has not proved at all and same cannot be believed. The management contention that the workman had lost their lien of appointment in accordance with their appointment as well as clause 16(4) of Model Standing order which are applicable to the respondent. The management has also explained the circumstances under which the workmen lost lien on appointment. It is a common ground that management had asked for an undertaking from the workmen. The workmen themselves are relying on the undertaking which are produced by them as Exhibit W-1. The management also filed copies of the undertaking. The workmen have stated in their claim statement that undertaking was humiliating against the law. But in Exhibit W-1 there is no such language as humiliating or against the law. The language is as under :—

The Administrative Officer,
M/s Alfament Pvt. Ltd., Plot No 148,
Sector 24, Faridabad

Dear Sir,

I have read your notice dated 31st July, 1979 regarding the illegal tool down/stay in strike resorted to by me along with other workmen from 25th July, 1979, for which I feel very ashamed. By this letter I assure you that if I am allowed to go inside the factory I shall perform my duty, give very good production and maintain discipline.

I shall not resort to tool down/stay in strike. In case I act contrary to this assurance, the management will be within their rights to send me out of the factory and take appropriate action against me.

I, therefore, request you to please allow me to go inside the factory for which I shall be grateful to you.

Thanking you.

Yours faithfully,
XYZ.

This undertaking was displayed on the notice board,—vide Exhibit M-18. The management has clarified the position as to why it was demanding the undertaking. Workmen are employed for work and they have right to go inside the factory for work and not for

resorting to stay in strike. The right to ask for undertaking or assurance has been recognised by Courts in law in the following decisions :—

ENGG MAJDOOR SABHA

Versus

S.T. BILGRAMI

“That the refusal to lift lockout on account of go slow was justified when the workman failed to give undertaking and termination of 114 workmen was justified.”

NATIONAL ENGINEERING INDUSTRIES LTD.

Versus

HANUMAN

1967(15) F.L.R. PAGE 261

Held —

“We do not understand how a workman who has lost his lien on his appointment can continue in service thereafter. Where therefore a standing order provides that workman would lose his lien on his appointment, if he does not join his duty within certain time after his leave expires, it can only mean that his service stands automatically terminated when the contingency happens.”

BUCKINGAM AND CARNATIVE CO. LTD.

Versus

VENKATYA (25 FJR PAGE 25)

Held —

“Where, therefore, a clause in the certified standing orders provides that any employee who absent himself for eight consecutive days without leave shall be deemed to have left the company's services without notice thereby terminating if his contract of service, is inevitably leads to the inference that if any employee is absent for eight consecutive days without leave, he is deemed to have terminated his contract of service and abandoned his employment.

TRAVENCORE RAYONS LIMITED V.S. TRANVENCORS RAYONS EMPLOYEES' UNION (1977 (34) F.L.R. Page 261)

Held —

“Where an employer bonafide takes recourse to the provisions in the standing orders entitling him to deem not cast any obligation on the management to hold a department enquiry before terminating the services of the employee. That is because the termination of services is automatically brought about by the action of the employee himself by force of the provisions contained in the certified standing orders which are fully binding on the employee.”

and regarding the undertaking Exhibit W-1 Shri Deep Chand WW-1 in his cross-examination has admitted that most of the workmen had signed the undertaking and had reported for duty

Shri Sita Ram and Dabu Lal also signed the assurance letter which are Exhibits M-59 to M-60. The management has also put other undertaking of the workman of the file which are Exhibits M-23, M-53 and Exhibit M-54 to M-61. The management was justified in asking for written undertaking from the workman of account of reason stated in Exhibit M-18 and when most of the workmen of the factory have executed the undertaking it does not lie in the mouth of these three workmen to say that the undertaking was humiliating. It is admitted by Shri Deep Chand WW-1 that no workman made any complaint to the Labour Department or union regarding the undertaking WW-1. When the workman had failed to give undertaking and did not report for duty. It is but natural to treat them as absent from duty. The witness of the respondent MW-1-Shri R. Sibbal has stated in statement that all these workmen were remained absent for more than 10 days and lost their lien of their jobs. The respondent sent individual letters to Shri Deep Chand M-96, Babu Lal M-94 and also sent the notice in the local newspaper Bharat Darshan and after this all the respondents had taken the right decision and the workmen lost their lien on their jobs, so it is a case of loss of lien of their jobs themselves for having remained absent for more than 10 days. It is not a case of dismissal or retrenchment by the management and automatic termination of service does not come under section 2(a) nor section 25 of the Industrial Disputes Act.

L. ROBERT D'SOUZA V.S. EX-ENGINEER SOUTHERN RAILWAY
[1979(12) LIC Page 1399 at page 1415]

Held:—

"In as much as the termination of service of the petitioner in the present case is not on the ground that he had become surplus to the requirements of the Railway establishment but on a totally different ground, namely that he has unauthorisedly absented himself and thereby the applicability of the provisions for automatic termination contained in R. 2505 of the Railway establishment Manual, we have to hold in the light of the preceding discussion that the petitioner cannot be said to have been retrenched from service and that hence S. 25-F of the Act is not attracted. The petitioner's prayer for a declaration that the termination of his service is illegal and void on the ground of violation of provisions of section 25-F of the Act cannot, therefore be granted."

The representative of the workman argued on this issue that there was a lockout in the factory on 31st July, 1979 which was illegal lockout and the respondent did not allow the workmen to go inside the factory and they displayed a notice on the notice-board which is Exhibit W-1 which was humiliating and against the law. The said notice was not according to the facts of day. There was no tool down strike or stay-in strike from 25th July, 1979 which is mentioned in Exhibit W-1. Again in this notice it is written that the workmen signed it before coming in the factory and the words "I feel very ashamed for the tool down strike" is humiliating which the workmen did not sign because they are self respected persons. The workmen were the old workman of the respondent and they cannot be turned out in this way as the respondent has turned out these workmen. There was a lockout in the factory without any reason and the respondent took the plea of tool down strike because the respondent cannot lock out the factory illegally and they put this lock out on the workmen to save them from the illegal work. The workman Shri Deep Chand stated in his statement as WW-1 that he joined the factory on 20th May, 1976 and worked on Kharad Machine and was terminated on 31st July, 1979 without giving any notice or charge-sheet. He refused to sign, Exhibit W-1 and not allowed inside the factory. He further argued that the management should have given the notice and charge-sheet and there after there should be enquiry for terminating the service of these workmen. The respondent has terminated the service of the workmen without any enquiry or charge-sheet

which is illegal and cannot stand in the law. As the workmen were permanent and old employees. They should have been given retrenchment compensation and other compensation under the law which were not given to the workmen which is also illegal and the workmen are entitled for reinstatement with full back wages and continuity of service.

After hearing the arguments of the parties and carefully going through the file, I am of the view that the respondent has fully proved their case by oral and documentary evidence. The workmen have failed to give any evidence for lockout which they have stated in their claim statement that there was a lockout in the factory on 31st July, 1979 and the workman has produced Exhibit W-1 an undertaking for the workman on behalf of the management which is very clear that there was a tool down strike in the factory and the respondent after giving so many notices to the workmen and the copies of the same to the labour authorities and district authorities and they finally decided to issue this notice for the assurance from the workmen and there was no humiliating language in this notice. It cannot be believed that there a lockout in the factory and it is believed that there was a tool down strike in the factory. After seeing the record produced by the respondent, the respondent had displayed the notice on the notice-board and also sent the notice of the same to the labour authorities and district authorities. There was a tool down strike otherwise what was the fun to send those letters to the authorities and the documents are after thought which clearly shows that there was tool down strike in the factory. The workman admitted in his cross-examination that most of the workman went in side the factory after signing the assurance letter and even Shri Babu Lal and Sita Ram also signed the assurance letters and went inside the factory for work. But they started remaining absent after some days and respondent has rightly struck off the names of these workmen according to the service condition of these workmen which is very clear in their appointment letters at para No. 11 and the workman had signed this appointment letters. Under the model standing order clause 16 (4) which very is clear that after thee unauthorised absent from the duty for more than 10 days the management has the right to struck off the name of the workmen from their attendance and they lost their lien on the job. So this issue is decided in favour of the respondent and against the workmen.

Issue No. 2

After deciding issue No. 1 it is clear that the respondent did not terminate the service of the workmen and cannot be held unjustified by the respondent, so there is no need to discuss this issue any more because the respondent has taken the right step against the workmen after going through the long procedure of notice and the workmen did not come in the factory knowingly for their duty. So they are not entitled for any relief. This be read in answer to these references.

Dated the 26th February, 1982.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.

Endorsement No. 558, dated 2nd March, 1982.

Forwarded (four copies) to the Commissioner and Secretary to Government Haryana, Labour and Employment Department, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,
Presiding Officer,
Labour Court, Haryana,
Faridabad.